

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

TRUSTEES OF THE N.E.C.A. – IBEW LOCAL 176)	
HEALTH, WELFARE, PENSION, VACATION AND)	
TRAINING TRUST FUNDS,)	
)	
Plaintiffs,)	
vs.)	No. 13-cv-01395
)	
HIGHER POWER ELECTRIC, LLC, an Indiana Limited)	Judge Robert Gettleman
Liability Company, and JANET MICHAEL, Individually)	
)	
Defendants.)	

**MOTION FOR JUDGMENT AGAINST CORPORATE DEFENDANT
AND TO AMEND COMPLAINT AS TO INDIVIDUAL DEFENDANT**

Plaintiffs, by one of their attorneys, JOHN F. ETZKORN, pursuant to F.R.C.P. 55, respectfully request This Honorable Court to enter Judgment in a Sum Certain in favor of Plaintiffs, TRUSTEES OF THE N.E.C.A. – IBEW LOCAL 176 HEALTH, WELFARE, PENSION, VACATION AND TRAINING TRUST FUNDS and against Defendant, HIGHER POWER ELECTRIC, LLC, an Indiana Limited Liability Company (“HIGHER POWER”), in the amount of \$66,396.37, and to allow Plaintiffs leave to file their Second Amended Complaint renaming Janet Michael as a Defendant herein. In support of their Motion, Plaintiffs state as follows:

1. This Complaint was filed on February 21, 2013.
2. Defendant HIGHER POWER was served on March 1, 2013 c/o its Registered Agent, National Registered Agent, Inc., pursuant to the Proof of Service previously filed herein and appeared and answered herein on March 20, 2013 by an answer which admitted, by alleging lack of information and failing to deny, the operative allegations of the Complaint regarding execution of the applicable labor agreements and obligation to contribute.

3. Pursuant to the Affidavit of Howard Simon, as Partner of Calibre CPA Group, PLLC (attached hereto as Exhibit A), delinquent contributions are due in the amount of \$44,735.23 based on an audit of HIGHER POWER for the period from July 1, 2011 through February 28, 2013.

4. Pursuant to the Affidavit of John F. Etzkorn (attached hereto as Exhibit B), the Plaintiffs have incurred \$21,661.14 in reasonable attorneys fees and costs in the course of prosecuting this action, and such fees and costs are required to be paid by Defendants pursuant to the applicable trust agreements and pursuant to ERISA at 29 U.S.C. Section 1132(g)(2).

5. Defendant HIGHER POWER, after refusing to execute settlement documents prepared to reflect the settlement agreed to by the parties before Magistrate Gilbert of this Court, agreed on September 30, 2014 that its attorney, Arthur C. Johnson, can withdraw from representing it and, accordingly, if Magistrate Gilbert's recommendation allowing withdrawal is accepted by this Court, will be unrepresented by counsel, unable to defend itself and if failing to respond to this Motion, in default herein.

6. Individual Defendant Thomas Michael was allowed to substitute as Defendant in the stead of his wife, Janet Michael, on Thomas Michael's agreement to assume co-extensive liability with her, but Thomas Michael has since filed personal bankruptcy and can assume no such liability, whereas Janet Michael signed a labor agreement with Plaintiffs and can held individually liable pursuant to the applicable provisions of the trust agreements incorporated in the labor agreement, which she executed, as cited in Count II, Paragraph 15 of the Complaint.

WHEREFORE, Plaintiffs request this Court for relief as follows:

A. Allow Higher Power a reasonable time to respond through counsel to this Motion but, if it does not, to enter judgment in favor of Plaintiffs and against Defendant HIGHER POWER in the sum of \$66,396.37 consisting of \$44,735.23 in audit delinquencies and \$21,661.14 in reasonable attorneys' fees and costs.

B. Rejoin Janet Michael as an individual Defendant in this case, without the need for service of process on her, as she has already appeared and answered, but allow her 28 days if she wishes to file an Amended Answer, and

C. Order Janet Michael, as a current or former Officer and Director of HIGHER POWER to produce the books and records of HIGHER POWER for fringe benefit contribution compliance audit for the period from March 1, 2013 through the present.

D. Grant such other relief as it deems equitable and just under the circumstances.

TRUSTEES OF THE N.E.C.A. – IBEW
LOCAL 176 HEALTH, WELFARE,
PENSION, VACATION AND TRAINING
TRUST FUNDS

/s/ John F. Etzkorn
By: One of the Plaintiffs Attorneys

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